

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

THOMAS JOSEPH MELGER,

Plaintiff,

v.

NATIONAL RIFLE ASSOCIATION, et  
al.,

Defendants.

No. 2:23-cv-1046 CKD P

ORDER AND

FINDINGS AND RECOMMENDATIONS

Plaintiff, a state prisoner proceeding pro se, has filed a civil rights complaint. He seeks leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a). For the reasons stated below, the court finds that plaintiff has not demonstrated he is eligible to proceed in forma pauperis.

A prisoner may not proceed in forma pauperis:

if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g).

A review of court records reveals that it was determined in Melger v. Sacramento Sheriff Dept., No. 2:21-cv-1611 WBS AC (E.D. Cal. Oct. 6, 2021), that plaintiff has “struck out” under 28 U.S.C. § 1915(g).

1 The section 1915(g) exception applies if a complaint makes a plausible allegation that  
2 the prisoner faced “imminent danger of serious physical injury” at the time of filing. 28 U.S.C.  
3 § 1915(g); Andrews v. Cervantes, 493 F.3d 1047, 1055 (9th Cir. 2007). Here, the complaint  
4 does not allege that plaintiff faced an imminent danger of serious physical injury at the time  
5 plaintiff filed the complaint. Plaintiff’s application for leave to proceed in forma pauperis  
6 must therefore be denied pursuant to § 1915(g) and plaintiff must submit the appropriate filing fee  
7 in order to proceed with this action.

8 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court assign a district  
9 court judge to this case.

10 IT IS HEREBY RECOMMENDED that:

- 11 1. Plaintiff’s application to proceed in forma pauperis (ECF No. 2) be denied; and  
12 2. Plaintiff be ordered to pay the \$402 filing fee within fourteen days from the date of any  
13 order adopting these findings and recommendations.

14 These findings and recommendations are submitted to the United States District Judge  
15 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
16 after being served with these findings and recommendations, plaintiff may file written  
17 objections with the court. Such a document should be captioned “Objections to Magistrate  
18 Judge’s Findings and Recommendations.” Failure to file objections within the specified time  
19 may waive the right to appeal the District Court’s order. Turner v. Duncan, 158 F.3d 449, 455  
20 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

21 Dated: August 21, 2023

22   
23 CAROLYN K. DELANEY  
24 UNITED STATES MAGISTRATE JUDGE

25  
26 1/ks  
27 melg1046.3ks  
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